IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Terri Novotny,

Plaintiff,

v. **Case No. 03-2566-JWL**

Coffey County Hospital, Brian Knight and Damian O'Keefe,

Defendants.

MEMORANDUM & ORDER

Plaintiff Terri Novotny filed suit against defendants alleging violations of 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., arising out of her former employment with defendant Coffey County Hospital. This matter is presently before the court on defendant Coffey County Hospital's motion for partial judgment on the pleadings (doc. #22). As set forth in more detail below, the motion is granted in part, denied in part, and is otherwise moot.

Background

In her initial complaint, plaintiff asserted three causes of action—one against all defendants for the alleged deprivation of her constitutional rights in violation of 42 U.S.C. § 1983; one against defendant Coffey County Hospital for "sexual discrimination and sexual harassment" in violation of Title VII; and one against defendant Coffey County Hospital for retaliation in violation of Title VII. Thereafter, plaintiff filed a motion to amend her complaint in which she essentially sought to add a new party plaintiff and to abandon her retaliation claim in favor of a claim for constructive

discharge. While plaintiff's motion to amend was pending, defendant Coffey County Hospital filed its motion for partial judgment on the pleadings. In its motion, the hospital moved for judgment on each of plaintiff's Title VII claims on the grounds that plaintiff had failed to file a charge of discrimination with the Kansas Human Rights Commission ("KHRC") and, thus, failed to exhaust her administrative remedies. In the alternative, the hospital moved for judgment on plaintiff's sexual discrimination and retaliation claims for failure to exhaust administrative remedies in that plaintiff failed to assert these claims in the charge of discrimination that she filed with the EEOC.

In response, plaintiff expressly conceded that she did not allege retaliation in her EEOC charge and that dismissal of her retaliation claim was appropriate. In any event, the hospital's motion on this issue is now moot as Magistrate Judge O'Hara has since granted plaintiff's motion to amend her complaint to the extent she sought to abandon her retaliation claim in favor of a constructive discharge claim and plaintiff, on April 7, 2004, filed an amended complaint that does not assert a retaliation claim. Thus, because plaintiff does not presently allege a claim for retaliation, the hospital's motion in this regard is moot.

With respect to plaintiff's claim for sex discrimination, the hospital moves for judgment to the extent this claim is intended to assert claims separate and distinct from plaintiff's sexual harassment claim (*e.g.*, a claim for discrimination in pay, promotion, job assignment based on plaintiff's sex). In her response to the hospital's motion, plaintiff clarified that she was not attempting to assert claims of sex discrimination apart from her claims of sexual harassment and

constructive discharge resulting from that harassment. The hospital's motion in this regard, then, is granted.[1]

The only issue remaining for the court's resolution, then, is whether plaintiff's Title VII claims should be dismissed in their entirety because plaintiff failed to file a charge of discrimination with the KHRC.

Standard

A motion for judgment on the pleadings under Rule 12(c) is treated as a motion to dismiss under Rule 12(b)(6). *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000). The court will dismiss a cause of action under Rule 12(b)(6) only when "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his [or her] claims which would entitle him [or her] to relief," *Poole v. County of Otero*, 271 F.3d 955, 957 (10th Cir. 2001) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)), or when an issue of law is dispositive, *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001). The issue in resolving a motion such as this is "not whether [the] plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." *Swierkiewicz*

[1] The hospital, in turn, clarified in its reply brief that it was not challenging any claim for constructive discharge.

v. Sorema N.A., 534 U.S. 506, 511 (2002) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

Discussion

Before an aggrieved party may file suit in federal court under Title VII, he or she must first exhaust administrative remedies. In a deferral state, like Kansas, Title VII requires a complainant to exhaust state administrative remedies before filing a charge with the EEOC and gives the state an exclusive 60-day deferral period to complete its investigation. 42 U.S.C. § 2000e-5. In this case, plaintiff's complaint alleges that she timely filed a charge of discrimination with the EEOC, but it does not allege that she first filed a charge with the KHRC. Nevertheless, in *Love v. Pullman Co.*, 404 U.S. 522 (1972), the Supreme Court held that "[n]othing in the Act [*i.e.*, Title VII] suggests that the state proceedings may not be initiated by the EEOC acting on behalf of the complainant rather than by the complainant himself." *Id.* at 525. Based on this language, courts in this district have held that "[a] claimant may either file the charges directly with the state agency or file them with the EEOC and rely on the EEOC to refer them to the proper state agency." *Morris v. State of Kan. Dep't of Revenue*, 849 F. Supp. 1421, 1427 (D. Kan. 1994); *see also Schmitt v. Beverly Health & Rehab. Servcs., Inc.*, 962 F. Supp. 1379, 1383 (D. Kan. 1997) ("In a deferral state, like Kansas, a claimant may either file the charges directly with the state agency or file them with the EEOC and rely on the EEOC to refer them to the proper state agency."); *Gaddy ex rel. Gaddy v. Four B Corp.*, 953 F. Supp. 331, 335 (D. Kan. 1997) ("Although Kansas is a deferral state requiring that the EEOC defer its investigation to the KHRC, the plaintiff's

EEOC filing is sufficient to activate the KHRC's investigation because she is entitled to rely on the EEOC to refer her discrimination charge to the KHRC based on the information she provided the EEOC.").

Defendant contends that the Kansas Court of Appeals changed all this in *Hughs v. Valley State Bank*, 26 Kan. App. 2d 631, 994 P.2d 1079 (1999). In *Hughs*, the Kansas Court of Appeals considered whether the plaintiff's filing of a retaliation charge with the EEOC, which was filed and forwarded to the KHRC, "was sufficient to initiate a state agency proceeding under the [Kansas Act Against Discrimination ("KAAD"), K.S.A. § 44-1001 *et seq.*]" *Id.* at 637, 994 P.2d at 1084. The court concluded that it is not. *Id.* at 636-42, 994 P.2d at 1083-87. Notably absent from the court's reasoning, however, is any mention of the relevant statutory language in Title VII. Thus, the opinion is not persuasive nor informative on the issue of exhaustion of administrative remedies under Title VII. *Hughs* merely stands for the proposition that KAAD claims must be dismissed for failure to exhaust state administrative remedies if the complainant does not file a charge with the KHRC. *See, e.g., Lawyer v. Eck & Eck Machine Co.*, 197 F. Supp. 2d 1267, 1273, 1277-78 (D. Kan. 2002) (dismissing the plaintiff's KAAD claims, but not Title VII claims, where the plaintiff filed a charge of discrimination with the EEOC but not the KHRC; citing *Hughs*); *Nixon v. Muehlberger Concrete Constr. Co.*, 170 F. Supp. 2d 1123, 1125-26 (D. Kan. 2001) (same); *see also Gaddy*, 953 F. Supp. at 334-35 (dismissing the plaintiff's KAAD claims, but not ADA claims, where the plaintiff filed a charge of discrimination with the EEOC but not the KHRC). Here, the only claims at issue are Title VII claims, and therefore *Hughs* does not dictate a different result.

The hospital contends that Title VII requires the plaintiff to commence proceedings under state or local law, 42 U.S.C. § 2000e-5(c); that Title VII requires the court to look to state law to determine whether a proceeding was commenced under state law; that the Kansas Court of Appeals decision in *Hughs* is binding authority that a proceeding is not actually commenced under state law unless the plaintiff files a charge of discrimination with the KHRC; and that therefore plaintiff's Title VII claims must be dismissed because plaintiff never actually commenced proceedings under state law by filing a charge with the KHRC. The inquiry, however, is not whether the proceeding was *actually* commenced under state law, but rather whether Title VII requires that a proceeding be *regarded* as having been commenced under state law. The answer to this issue turns on the correct meaning of § 2000e-5(c), and hence involves an interpretation of a federal statute. As such, this court is bound by the authority of the Supreme Court of the United States which, as mentioned previously, has already spoken on this issue. *Love*, 404 U.S. at 525 ("Nothing in the Act suggests that the state proceedings may not be initiated by the EEOC acting on behalf of the complainant rather than by the complainant himself.").

The hospital also contends this court should follow the Fourth Circuit's holding in *Davis v. North Carolina Department of Corrections*, 48 F.3d 134 (4th Cir. 1995). The hospital's reliance on *Davis* is misplaced for a variety of reasons. Most obviously, in *Davis*, the Fourth Circuit was presented with a different procedural scenario than the court is confronted with in this case. Further, the Fourth Circuit's reasoning in *Davis* also notably rested on the fact that the EEOC had never investigated the claim, made a determination as to the claim's merit, or issued a right-to-sue notice. *Id.* at 138. Perhaps most importantly, five years after *Davis* the Fourth

Circuit held that an employee commenced proceedings under state law when she filed a charge with the EEOC because of the impact of a work-sharing agreement between the EEOC and the state agency. *See generally Puryear v. County of Roanoke*, 214 F.3d 514 (4th Cir. 2000). Similarly, the EEOC and the KHRC have a work-sharing agreement that very well may contain provisions that are sufficient to overcome plaintiff's failure to file a charge with the KHRC.[2] *See Morris*, 849 F. Supp. at 1428. Thus, based on the mere existence of this work-sharing agreement, combined with plaintiff's allegation that she timely filed a charge with the EEOC, the court is unable to conclude that it appears beyond a doubt that plaintiff can prove no set of facts that would entitle her to relief. Accordingly, defendant is not entitled to judgment on the pleadings on this issue.

In sum, then, the court is unpersuaded by the hospital's arguments. The fact that plaintiff's complaint alleges that she filed a charge with the EEOC is sufficient to withstand the hospital's motion for judgment on the pleadings on the issue of whether plaintiff exhausted her administrative remedies by commencing proceedings under state law for purposes of Title VII.

IT IS THEREFORE ORDERED BY THE COURT THAT the hospital's motion for partial judgment on the pleadings (doc. #22) is granted in part, denied in part, and is otherwise moot.

---

[2] Consistent with the standard for resolving a motion for judgment on the pleadings, the court is not relying on the fact that plaintiff submitted this work-sharing agreement in response to the hospital's motion and the court will not delve into the terms of this work-sharing agreement. Instead, the court simply relies on the observation of the court in *Morris* that such an agreement exists and very well may contain the requisite provisions to overcome plaintiff's failure to file a charge with the KHRC.

IT IS SO ORDERED.

Dated this 10th day of May, 2004, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge